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*Electronically Filed On  
March 8, 2013*

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7

8 **UNITED STATES BANKRUPTCY COURT  
9 DISTRICT OF NEVADA**

10 In re:

Case No. BK-S-12-14724-LBR  
11 Chapter 7

12 WILLIAM WALTER PLISE, AKA BILL  
13 PLISE,

Debtor.

14 SHELLEY D. KROHN, CHAPTER 7  
15 TRUSTEE,

Adv. No. BK-S-12-1214-LBR

Plaintiff,

16 v.  
17 WILLIAM WALTER PLISE; TENNILLE I.  
18 PLISE; 13413 SHORE VISTA DRIVE, LLC;  
OLD TOLL ROAD, LLC; DHLC MORTGAGE,  
LLC; BERT and SADIE BEDORD; KENNETH  
19 J. AND MARCIA HILLS PROFIT SHARING  
PLAN; ERIC RUSSELL PETERSON; SHAUN  
CLEM; CRAIG ALAN STOOPS; KOBA  
20 INVESTMENTS, LLC; 5550 LAS VEGAS,  
LLC; DOE individuals 1-10; and ROE  
21 corporations 1-10,

**MOTION TO APPROVE COMPROMISE  
AND SETTLEMENT PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 9019**

22 Defendants.

Date of Hearing: March 19, 2013  
Time of Hearing: 9:30 a.m.  
Place: Courtroom No. 1, Third Floor  
Foley Federal Building  
300 Las Vegas Blvd., S.  
Las Vegas, NV 89101

Judge: Hon. Linda B. Riegle

23  
24 SHELLEY D. KROHN, Chapter 7 Trustee in the above-referenced action (the “Trustee”  
25 or “Plaintiff”) by and through her counsel, the law firm of Cotton, Driggs, Walch, Holley,  
26 Woloson & Thompson, and Defendants Tennille I. Plise, 13413 Shore Vista Drive, LLC, Old  
27 Toll Road, LLC, Koba Investments, LLC and 5550 Las Vegas, LLC (collectively known as  
28

“Defendants”), respectfully move this Court to Approve Compromise and Settlement pursuant to Bankruptcy Rule 9019 (“Motion”), between the Defendants and Plaintiff (collectively, the “Parties”) as reflected in the proposed Settlement Agreement.<sup>1</sup>

The Parties have reached an agreement to settle Plaintiff's claims against Defendants. The Settlement is memorialized in the Settlement Agreement and Release executed by each of the Parties on or about March 7, 2103 (the "Settlement Agreement"), a true and correct copy of which is attached to the Declaration of Shelley D. Krohn (the "Krohn Declaration") as **Exhibit "1"**, which declaration is filed separately and concurrently with this Court as required under Local Rule 9014(c)(2).

This Motion is based on the following Memorandum of Points and Authorities and the exhibits attached hereto, the pleadings and papers on file herein, and any argument that may be entertained on the hearing of the Motion.

Dated this 8<sup>th</sup> day of March, 2013.

# COTTON, DRIGGS, WALCH, HOLLEY, WOLOSON & THOMPSON

/s/ Victoria L. Nelson  
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*Attorneys for Shelley D. Krohn, Chapter 7  
Trustee*

<sup>1</sup> The Settlement Agreement does not resolve any claims that were filed by the Trustee that objected to the discharge of William Walter Plise pursuant to 11 U.S.C. § 727.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## **I. STATEMENT OF RELEVANT FACTS**

1. On April 23, 2012, William Walter Plise (the “Debtor”) filed his Chapter 7 voluntary petition for relief in the above-referenced matter under Chapter 7 of the United States Bankruptcy Code. [Main Bankruptcy Case, Dkt. No. 1]. See Krohn Declaration.

2. On April 23, 2012, Shelley D. Krohn was appointed the Chapter 7 Trustee in this matter [Main Bankruptcy Case, Dkt. No. 3]. See Krohn Declaration.

3. On September 19, 2012, Plaintiff filed a complaint against the Debtor, Tennille Shore Vista, alleging claims for relief for (1) avoidance of fraudulent transfers pursuant to 11 U.S.C. § 544(b); (2) recovery of fraudulent transfers pursuant to 11 U.S.C. § 550; (3) turnover of estate property pursuant to 11 U.S.C. § 542; (4) injunctive relief pursuant to Bankruptcy Rule of Civil Procedure 7065; (5) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(2)(A); (6) objection to discharge of Debtor pursuant to 11 U.S.C. 727(a)(2)(B); (7) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(3); (8) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(5); and (9) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(6) (the “Complaint”) [Adv. Proc. Dkt. No. 1]. See Krohn Declaration.

4. On September 20, 2012, Plaintiff filed a Motion for Preliminary Injunction preventing the Defendants from transferring, encumbering, or other disposing of the real property located at 13413 Shore Vista Drive, Austin, Texas 78732 (the “Austin Property”) [Adv. Proc. Dkt. No. 10]. See Krohn Declaration.

5. On September 19, 2012, Tennille transferred her interest in the real property located at Lot 5 Mountain Subdivision, Lake City, County of Hinsdale, State of Colorado, 8515 Hinsdale County Road, Colorado 81235 (the “Colorado Property”). See Krohn Declaration.

6. On October 17, 2012, Plaintiff filed a First Amended Complaint adding claims for avoidance of fraudulent transfer pursuant to 11 U.S.C. § 544(b) against Tennille and Old Toll Road LLC for the transfer of the Colorado Property [Adv. Pro. Dkt. No. 23]. See Krohn Declaration.

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1       7.     On November 2, 2012, Shore Vista filed an Answer to the First Amended  
 2 Complaint [Adv. Proc. Dkt. No. 36]. See Krohn Declaration.

3       8.     Plaintiff subsequently discovered facts giving rise to a claim for relief for  
 4 fraudulent transfer pursuant to 11 U.S.C. § 544(b) to avoid the first deed of trust on the Austin  
 5 Property held in favor of DHLC Mortgage, LLC, (“DHLC”) Bert and Sadie Bedford, the  
 6 Kenneth J. and Marcia Hills Profit Sharing Plan, Eric Russell Peterson, Shaun Clem, and Craig  
 7 Alan Stoops (collectively, the “DHLC Investors”), and the second deed of trust held in favor of  
 8 Tennille. Plaintiff has also uncovered claims for relief for alter ego against Koba Investments,  
 9 LLC (“Koba Investments”) and 5550 Las Vegas, LLC (“5550 Las Vegas”). See Krohn  
 10 Declaration.

11      9.     On November 13, 2012, Plaintiff filed a Motion to Amend the First Amended  
 12 Complaint in order to assert claims for relief against DHLC, the DHLC Investors, Koba  
 13 Investments, and 5550 Las Vegas [Adv. Proc. Dkt. No. 57]. See Krohn Declaration.

14      10.    On December 19, 2012, the Court entered an Order Granting Plaintiff’s Motion to  
 15 Amend the First Amended Complaint [Adv. Proc. Dkt. No. 94]. See Krohn Declaration.

16      11.    On December 27, 2012, Plaintiff filed a Second Amended Complaint against the  
 17 Debtor, Tennille, Shore Vista, DHLC, the DHLC Investors, Koba Investments, and 5550 Las  
 18 Vegas, alleging claims for relief for (1) alter ego; (2) avoidance of fraudulent transfers pursuant  
 19 to 11 U.S.C. § 544(b); (3) recovery of fraudulent transfers pursuant to 11 U.S.C. § 550; (4)  
 20 turnover of estate property pursuant to 11 U.S.C. § 542; (5) injunctive relief pursuant to  
 21 Bankruptcy Rule of Civil Procedure 7065; (6) objection to discharge of Debtor pursuant to 11  
 22 U.S.C. § 727(a)(2)(A); (7) objection to discharge of Debtor pursuant to 11 U.S.C. 727(a)(2)(B);  
 23 (8) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(3); (9) objection to discharge  
 24 of Debtor pursuant to 11 U.S.C. § 727(a)(4)(A); and (10) objection to discharge of Debtor  
 25 pursuant to 11 U.S.C. § 727(a)(4)(D); (11) objection to discharge of Debtor pursuant to 11  
 26 U.S.C. § 727(a)(5); and (12) objection to discharge of Debtor pursuant to 11 U.S.C. § 727(a)(6)  
 27 (the “Second Amended Complaint”) [Adv. Proc. Dkt. No. 98]. See Krohn Declaration.

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1           12. On January 2, 2013, the Court entered an Order Granting the Motion for  
2 Preliminary Injunction [Adv. Proc. Dkt. No. 99]. See Krohn Declaration.

3           13. On January 7, 2013, Shore Vista, Koba Investments, and 5550 Las Vegas filed an  
4 Answer to the Second Amended Complaint that included a demand for jury trial [Adv. Proc. Dkt.  
5 No. 111]. See Krohn Declaration.

6           14. On January 7, 2013, the Debtor filed an Answer to the Second Amended  
7 Complaint [Adv. Proc. Dkt. No. 112]. See Krohn Declaration.

8           15. On January 10, 2013, Shore Vista, Koba Investments, and 5550 Las Vegas filed a  
9 Motion for Certification of Adversary Proceeding to the District Court (the “Motion for  
10 Certification”) [Adv. Proc. Dkt. No. 114]. The Motion for Certification argues that the present  
11 adversary proceeding should be transferred to the United States District Court pursuant to  
12 Federal Rule of Bankruptcy Procedure (“FRBP”) 9015(b) and Local Rule of Bankruptcy  
13 Procedure 9015(e). See Krohn Declaration.

14           16. On January 10, 2013, Tennille and Old Toll filed an Answer to the Second  
15 Amended Complaint that included a demand for jury trial [Adv. Proc. Dkt. No. 115].

16           17. On January 11, 2013, Tennille and Old Toll filed a Joinder to the Motion for  
17 Certification [Adv. Proc. Dkt. No. 116]. See Krohn Declaration.

18           18. On February 13 and 14, 2013, the Parties attended a settlement conference with  
19 Judge Herbert Ross in attempt to resolve all issues in the Second Amended Complaint. See  
20 Krohn Declaration.

21           19. The Trustee resolved the dispute with the Defendants at the settlement conference  
22 pursuant to the terms set forth in the Settlement Agreement.

23           20. The Parties seek to resolve the outstanding claims and rights of Plaintiff, and to  
24 resolve all issues regarding the Complaint brought by Plaintiff against the Defendants. See  
25 Krohn Declaration.

26           21. The Parties have negotiated and reached the settlement in good faith. See Krohn  
27 Declaration.

28 ...

1           22. The material terms of the Settlement Agreement are as follows:

2           i). In settlement of the claims for relief in the Second Amended Complaint against  
 3           Shore Vista and Tennille, the Parties agree that the Austin Property will be  
 4           sold according to the following terms:

5           a. The Austin Property will continue to be listed for sale  
 6           pursuant to the terms of the exclusive listing agreement  
 7           entered into between Shore Vista, Delilah Fuentes, and  
 8           Keller Williams Realty (the "Exclusive Listing  
 9           Agreement"). If the Austin Property has not sold by the  
 10           time the Exclusive Listing Agreement expires, the Trustee,  
 11           in her sole discretion, will have the right to replace Delilah  
 12           Fuentes and Keller Williams Realty with a real estate agent  
 13           of her choosing.

14           b. The listing agreement for the Austin Property shall be  
 15           amended to indicate that the Trustee and Shore Vista are  
 16           jointly selling the Austin Property.

17           c. Any sale of the Austin Property is contingent on the written  
 18           approval of both the Trustee and Shore Vista.

19           d. Any proceeds from the sale of the Austin Property will first  
 20           be used to satisfy any balance owed to DHLC and the  
 21           DHLC Investors pursuant to the First Deed of Trust.

22           e. After the First Deed of Trust in favor of DHLC and the  
 23           DHLC Investors has been satisfied, four hundred and  
 24           twenty-five thousand dollars (\$425,000.00) shall be wired  
 25           from escrow to the Trustee.

26           f. Any funds remaining after (1) the First Deed of Trust in  
 27           favor of DHLC and the DHLC Investors has been satisfied  
 28           and (2) the four hundred and twenty-five thousand dollars  
 29           (\$425,000.00) has been wired to the Trustee shall be  
 30           distributed to Tennille.

31           ii). The Trustee agrees to release Tennille from all claims arising out of the transfer of  
 32           any and all real and/or personal property related to the Divorce Decree.

33           iii). The Trustee agrees to voluntarily dismiss the claims for relief in the Second  
 34           Amended Complaint against Old Toll and the Colorado Property.

35           iv). The Trustee agrees to voluntarily dismiss the claims for relief for alter ego in the  
 36           Second Amended Complaint against Koba Investments.

37           v). In settlement of the claims for relief in the Second Amended Complaint against  
 38           5550 Las Vegas, Halverson agrees to avoid the 5550 Las Vegas Transfer (defined  
 39           above) and transfer any and all interest he holds in 5550 Las Vegas to the  
 40           bankruptcy estate of William Walter Plise including, but not limited to, all real or  
 41           personal property owned or controlled by 5550 Las Vegas, all legal and equitable  
 42           interests owned or controlled by 5550 Las Vegas, all tangible and intangible

1 property interests owned or controlled by 5550 Las Vegas, or any claims for relief  
 2 arising under Nevada law or the United States Bankruptcy Code out of the  
 3 transfer of money from 5550 Las Vegas to third parties. Halverson further agrees  
 4 to not defend, dispute, object, or assist in any defense of a claim for relief for alter  
 5 ego brought against 5550 Las Vegas by the Trustee.

6 vi). The Trustee agrees to release Halverson from any liability arising under the  
 7 United States Bankruptcy Code or Nevada law for payments that were made to  
 8 Halverson from the bank account at Service First Bank of Nevada held in the  
 9 name of 5550 Las Vegas (Account Number 1020009515). Nothing in this  
 10 Agreement prevents the Trustee from pursuing any claims for relief arising under  
 11 the United States Bankruptcy Code or Nevada law against Halverson for conduct  
 12 unrelated to withdrawals from the bank account at Service First Bank of Nevada  
 13 held in the name of 5550 Las Vegas (Account Number 1020009515).

### 14 III. LEGAL ARGUMENT

#### 15 A. The Legal Standard for Approval of Settlement

16 The Bankruptcy Court may approve a compromise or settlement between a debtor and  
 17 another party pursuant to Fed. R. Bankr. P. 9019(a), which provides the following:

18 Compromise. On motion by the trustee and after notice and a  
 19 hearing, the court may approve a compromise or settlement.  
 20 Notice shall be given to creditors, the United States trustee, the  
 21 debtor, and indenture trustees as provided in Rule 2002 and to any  
 22 other entity as the court may direct.

23 FED. R. BANKR. P. 9019(a).

24 Compromise and settlement agreements have long been an inherent component of the  
 25 bankruptcy process. The Ninth Circuit recognized that “[t]he bankruptcy court has great latitude  
 26 in approving compromise agreements.” See Woodson v. Fireman’s Fund Ins. Co. (In re  
Woodson), 839 F.2d 610, 620 (9th Cir. 1988). Accordingly, in approving a settlement, the  
 27 Court need not conduct an exhaustive investigation of the claims sought to be compromised. See  
United States v. Alaska National Bank (In re Walsh Constr., Inc.), 669 F.2d 1325, 1328 (9th Cir.  
 28 1982). Rather, it is sufficient that the Court find that the settlement was negotiated in good faith  
 and is reasonable, fair, and equitable. See Martin v. Kane (In re A & C Properties), 784 F.2d  
 1377, 1381 (9<sup>th</sup> Cir. 1986), cert. denied, 479 U.S. 854 (1986). It is within the sound discretion of  
 the bankruptcy court whether to accept or reject a compromise. See In re Carson, 82 B.R. 847  
 (Bankr. S.D. Ohio 1987).

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1                   The Ninth Circuit has identified the following factors for consideration in determining  
 2 whether a settlement is reasonable, fair, and equitable:

3                   (a) the probability of success in the litigation; (b) the difficulties, if  
 4 any, to be encountered in the matter of collection; (c) the  
 5 complexity of the litigation involved, and the expense,  
 6 inconvenience and delay necessarily attending it; (d) the  
 7 paramount interest of the creditors and a proper deference to their  
 8 reasonable views in the premises.

9                   In re A & C Properties, 784 F.2d at 1381. The Debtor is not required to satisfy each of these  
 10 factors as long as the factors as a whole favor approving the settlement. See In re Pacific Gas &  
 11 Electric Co., 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004). In considering the factors, “a precise  
 12 determination of the likely outcome is not required, since an exact judicial determination of the  
 13 values at issue would defeat the purpose of compromising the claim.” In re Telesphere Comm’s.  
 14 Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994) (internal quotations omitted). Thus, rather than  
 15 determining various issues of fact and law, the Court should “canvass the issues and see whether  
 16 the settlement fall[s] below the lowest point in the range of reasonableness.” In re Lion Capital  
 17 Group, 49 B.R. 163, 175 (Bankr. S.D.N.Y. 1985) (internal quotations omitted).

18                   **B. The Settlement Agreement is Fair and Equitable**

19                   **1. The Probability of Success in the Litigation**

20                   Plaintiff alleges in the Complaint that the Debtor fraudulently transferred approximately  
 21 \$2,850,000.00 to Tennille as a part of a divorce decree that was used to purchase the Austin  
 22 Property, which was then fraudulently transferred by Tennille to Shore Vista. Plaintiff also  
 23 alleges that the Debtor fraudulently transferred his interest in the Colorado Property to Tennille,  
 24 which was then fraudulently transferred by Tennille to Old Toll. Plaintiff seeks to recover the  
 25 Austin Property and Colorado Property for the benefit of the Debtor’s creditors. Plaintiff further  
 26 alleges that 5550 Las Vegas and Koba Investments are the alter egos of the Debtor. Plaintiff  
 27 believes that she is likely to prevail in the litigation against the Defendants. However, all of the  
 28 claims for relief in the Second Amended Complaint against the Defendants are fact-intensive and  
 raise complex legal questions. As a result, it is difficult to state with much certainty if the Court  
 would conclude that Plaintiffs are entitled to recover the Austin Property and Colorado Property

1 for the benefit of the bankruptcy estate.

2        **2. The Difficulties in Matter of Collection**

3        It is likely that Plaintiff will encounter difficulties in the matter of collection if she is  
 4 successful in her litigation with the Defendants. The Austin Property is subject to a first deed of  
 5 trust in favor of DHLC and the DHLC Investors which has a maturity date of April 1, 2013.  
 6 Since the Parties would not be prepared for trial until the latter part of 2013, the claims for relief  
 7 in the Second Amended Complaint would not be resolved prior to the April 1, 2013 maturity  
 8 date. Failure to satisfy the first deed of trust would result in DHLC and the DHLC Investors  
 9 initiating foreclosure proceedings, which would only have the effect of complicating any  
 10 collection process in the event that the Plaintiff was successful in the litigation. Moreover, the  
 11 Colorado Property is vacant land that would be difficult to market and sell. Thus, the factor of  
 12 difficulty in collection militates in favor of approving the proposed Settlement Agreement  
 13 submitted to this Court for approval.

14        **3. The Complexity of the Litigation Involved and the Expense, Inconvenience**  
 15        **and Delay**

16        The litigation involved is complex because it involves significant bank records, factual  
 17 findings, and nuanced legal issues. The litigation would also involve substantial time and  
 18 expense because of the evidence that will need to be gathered and analyzed and also because the  
 19 claims are intensely fact-based and likely will ultimately require a credibility determination from  
 20 the Court of the parties' veracity and intent in their business relationship. The delay and expense  
 21 to litigate the Complaint can be avoided altogether with the resolution provided in the Settlement  
 22 Agreement. The Settlement Agreement resolves the Parties' claims to any rights in the Colorado  
 23 Property, the Austin Property, and includes a release of all claims arising from any transfer made  
 24 pursuant to the Divorce Decree entered into between the Debtor and Tennille. To avoid the  
 25 delay, expense and uncertainty in the litigation, it is the most expeditious, cost effective,  
 26 convenient and least expensive for the Parties to amicably resolve the issues in the Second  
 27 Amended Complaint to avoid prolonged litigation. Thus, this factor militates in favor of an  
 28 order from this Court approving the proposed Settlement Agreement.

1                   4.     The Paramount Interest of the Creditors

2                   The Debtor's Schedule B provides that he only owns personal property in the amount of  
 3                   \$4,738.71. This \$4,738.71 figure includes a checking account (\$988.71), a personal safe and  
 4                   computer (\$250.00), assorted clothing (\$250.00), a wedding ring and watch (\$1,000.00), a 9mm  
 5                   Glock Pistol (\$250.00), and an eighteen foot trailer (\$2,000.00). Schedule C provides that the  
 6                   Debtor is exempting \$2,738.71 of the \$4,738.71 in assets. The only item of personal property  
 7                   that was not exempted, the eighteen foot trailer, is secured by a lien equal to its fair market value.  
 8                   Therefore, as of the Petition Date, the Debtor has had a no-asset bankruptcy case. The proposed  
 9                   Settlement Agreement is in the best interests of the creditors and the Debtor because it will result  
 10                  in the recovery of four hundred twenty-five thousand dollars that can be used for the benefit of  
 11                  creditors. Accordingly, approval of the Settlement Agreement will result in the recovery of  
 12                  funds that can be distributed to unsecured creditors.

13                   IV.     CONCLUSION

14                  For the foregoing reasons, the Plaintiffs request that the Court approve the proposed  
 15                  Settlement Agreement.

16                  Dated this 8<sup>th</sup> day of March, 2013.

17                   **COTTON, DRIGGS, WALCH,**  
 18                   **HOLLEY, WOLOSON & THOMPSON**

19                   */s/ Victoria L. Nelson* \_\_\_\_\_

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 27                   *Trustee*